

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 12810 OF 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

4 Whether this case involves a substantial question of
law as to the interpretation of the Constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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UNION OF INDIA & ANR. - Petitioner(s)

Versus

CHHAGANLAL LALJIBHAI KATARIA - Respondent(s)

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Appearance :

Shri Kalpesh N. Shastri for Petitioner(s) : 1 - 2.

None for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 30/08/2007

ORAL JUDGMENT

The petitioner, being aggrieved by the order dated 21st May,
2000 passed by the learned Labour Court No.7, Ahmedabad in Recovery

(Central) Application No.3 of 1982, is before this Court under Article 227 of the Constitution of India.

2. The short facts necessary for disposal of the present Writ Application are that the respondent was gainfully employed with the present petitioner, after he was terminated, he challenged his termination in the learned Civil Court, Bhavnagar in Regular Civil Case No.62 of 1976, the learned Senior Civil Judge, Bhavnagar set aside the termination; the appeal challenging the said order was registered as Regular Civil Appeal No.76 of 1980, but, the same also came to be dismissed on 7th December, 1981. Despite the decree passed by the learned Civil Court, the Union of India was not ready and willing to reinstate the workman or pay his legal dues, he filed Miscellaneous Civil Application No.175 of 1982 with a prayer for drawing the contempt proceedings against the petitioner. On 26th March, 1982, the petition came to be disposed of with a suggestion by the Court that in case there was any difference of opinion regarding computation, the petitioner (workman) be paid the amount which was admittedly payable to him in accordance with the computation made by the administration without any delay, preferably within thirty days. The High Court further observed that for the difference arising on account of method of computation, the same can be straightened out or the matter may be brought before the Court. It appears that thereafter certain computations were made by the

Department and they proposed to make certain payments. They filed Civil Application No.1875 of 1982 in the disposed of Miscellaneous Civil Application No.175 of 1982. The Court directed that the petitioner (Union of India) would not be obliged to pay the entire amount of back-wages but will have to pay 50% of the back-wages on or before 31st May, 1982. The Court adjourned the case to 19th July, 1982. It appears that in some other Civil Application No.1991 of 1983 filed in Miscellaneous Civil Application No.175 of 1982, the Court directed that in view of deposit of the sum of Rs.22,300/- in the Court of the learned Civil Judge (S.D.), Bhavnagar on 29th May, 1982, no further orders were required to be made at that stage on the Civil Application. The Court, accordingly, disposed of the Civil Application.

3. Shri Kalpesh N. Shastri, learned Counsel for the petitioner, taking advantage of the orders passed in Civil Application No.1991 of 1983 and 1875 of 1982, submitted that if Rs.22,300/- had been deposited, then, nothing further was to be paid by the present petitioner to the workman.

4. The argument raised by the learned Counsel for the petitioner unfortunately loses sight of the final order passed by this Court in Miscellaneous Civil Application No.175 of 1983. The order clearly states that “for the difference arising on account of method of

computation it can be straightened out or the matter may be brought before the Court". This order would simply mean that the admitted amount was to be paid within the time fixed by the Court and for the disputed amount, the workman could go to the Court. In accordance with the rights accrued in favour of the workman, he filed the Recovery Application under Section 33(C)(2) of the Industrial Disputes Act, 1947 and the said application has now been allowed.

5. Shri Kalpesh Shastri submitted that such application was not maintainable before the learned Labour Court because there was a dispute into the entitlement of the workman. According to him, unless there is a pre-adjudged or pre-adjudicated right in favour of the workman, an application under Section 33(C)(2) of the Act could not be maintained before the learned Labour Court.

6. Undisputedly, the decree passed in the civil suit in favour of the workman has been affirmed by the Appellate Court and thereafter, the said decree was not challenged before any higher Court or forum. The said decree would certainly bind the parties and the present petitioner cannot be allowed to say that the decree would not bind him, especially when on no earlier occasion, it was submitted by the present petitioner that the learned Civil Court had no jurisdiction, it could not entertain the dispute triable under the provisions of the Act or that the

Civil Court could not interfere in the matters covered under the provisions of the Act. Once the Court assumes jurisdiction and passes a decree or makes an award, then, the parties to such order, decree, judgement or award would be bound by the final outcome.

7. In the present matter, the present petitioner cannot be allowed to say that there existed no pre-adjudicated right in favour of the workman. The decree passed by the learned Trial Court, affirmed in the Appellate Court, in fact, adjudicated the dispute between the parties and decided the rights of the parties. That decision by the learned Civil Court certainly would create right, rather pre-adjudicated right, in favour of the workman. The learned Court below was not unjustified in granting the application.

8. The petition deserves to and is, accordingly, dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

[R.S.Garg, J.]

*kamlesh**